LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 6 1964
JOHN F. DAVIS, CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 893

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

LOVE & AMOS COAL COMPANY,
Respondent.

## PETITION FOR WRIT OF CERTIORARI

**To the Court of Appeals of Tennessee, Middle Section.**

JOHN B. RAYSON,
E. H. RAYSON,
R. R. KRAMER,
904 Burwell Building,
Knoxville, Tennessee,
HARRISON COMBS,
900 Fifteenth Street, N. W.,
Washington, D. C.,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

## INDEX.


| | Page |
|---|---|
| Opinions below | 2 |
| Jurisdiction | 2 |
| Question presented | 2 |
| Statute involved | 2 |
| Statement | 3 |
| Reasons for granting the writ | 9 |
| Conclusion | 15 |
| Appendix A—Statutes | 17 |
| Appendix B—Opinions and judgment below | 18 |
| Appendix C—Pleadings | 38 |


## CITATIONS.

**Cases:**


| | |
|---|---|
| Iron Workers, Local 207 v. Perko, 373 U. S. 701 (1963) | 14 |
| Love and Amos Coal Company v. United Mine Workers of America et al., Civil No. 3167, E. D. Tenn., January 27, 1959, 38 CCH Lab. L. Rep., Par. 65,741 | 5 |
| Plumbers, Local 100 v. Borden, 373 U. S. 690 (1963) | 14 |
| San Diego Building Trades Council v. Garmon, 359 U. S. 236 (1959) | 11, 12, 13 |
| Southern Furniture Mfg. Co. v. NLRB, 194 F. 2d 59 (5th Cir. 1952) | 9 |
| United Automobile Workers v. Russell, 356 U. S. 634 (1958) | 7, 9, 10 |
| United Constr. Workers v. Laburnum, 347 U. S. 656 (1954) | 7, 9, 10 |

United Mine Workers of America v. Love and Amos Coal Company, 279 F. 2d 716 (6th Cir. 1960) ..... 4, 5
United Mine Workers of America v. Osborne Mining Company, 279 F. 2d 716 (6th Cir. 1960) .....5, 9, 10
Wine, Liquor and Distillery Workers Union, 78 NLRB 504 (1948) ..... 9

**Statutes:**

National Labor Relations Act, 61 Stat. 140,
Sec. 7 (29 U. S. C. 157) ..... 7
Sec. 8 (b) (1) (29 U. S. C. 158 (b) (1)) ..... 7
Tenn. Code Ann., 47-1706 .....6, 13

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. .....

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

LOVE & AMOS COAL COMPANY,
Respondent.

## PETITION FOR WRIT OF CERTIORARI

**To the Court of Appeals of Tennessee, Middle Section.**

Petitioner, United Mine Workers of America ("UMW"), prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Tennessee, Middle Section, entered on July 26, 1963.[1]

[1] Subsequent to the entry of this judgment, UMW filed a petition for writ of certiorari in the Supreme Court of Tennessee. This petition was denied on December 9, 1963.

## CITATIONS TO OPINIONS BELOW.

The unreported opinion of the Court of Appeals of Tennessee, Middle Section, is printed in Appendix B (1) hereto, *infra*, p. 18. The order of the Supreme Court of Tennessee denying UMW's petition for writ of certiorari is also unreported; it appears in Appendix B. (2) hereto, *infra*, p. 36.

## JURISDICTION.

The Court of Appeals of Tennessee, Middle Section, entered its judgment on July 26, 1963. The Supreme Court of Tennessee denied UMW's petition for certiorari by order entered December 9, 1963.

UMW invokes the jurisdiction of this Court under 28 U. S. C. 1257 (3).

## QUESTION PRESENTED.

If in the course of a labor dispute, marked in part by violence, a union commits acts that are arguably subject to Sections 7 and 8 of the National Labor Relations Act, may a state court, consistent with the preemption doctrine, assert jurisdiction of a damage action brought by the employer's sales agent, who is neither a party to the labor dispute nor involved in the acts of violence, and in so doing award treble damages, under a state statute, for the non-performance of the sales agent's contract with the employer.

## STATUTE INVOLVED.

The statutory provisions involved are Sections 7 and 8 (b) (1) of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. 157 and 158 (b) (1), printed in Appendix A, *infra*, page 17.

## STATEMENT.

Respondent, Love and Amos Coal Company ("Love and Amos"), is a Tennessee corporation which sells and distributes coal in the capacity of a sales agent. It is not a coal producer or operator.

On January 12, 1961, Love and Amos filed the present action against UMW in the Circuit Court for Davidson County, Tennessee, seeking damages under state law for alleged interference with its contractual relations.

The essential facts are these: In 1954, Love and Amos entered into a contract with Osborne Mining Company ("Osborne"), a coal producer which was then operating several mines in parts of Kentucky and Tennessee. Under this contract, Love and Amos agreed to sell all the coal produced by Osborne for a commission of .25 per ton (Transcript, Vol. V, p. 600).

In the same year, the Tennessee Valley Authority ("TVA") awarded Love and Amos a contract calling for the delivery of 500,000 tons of coal over a period of two years (Plaintiff's Exhibit 47). Pursuant to its contract with Love and Amos, Osborne was to produce all the coal needed to fulfill the TVA contract, as well as others.

Osborne operated on a non-union basis. In the years 1954-56, UMW was engaged in an extensive organizational campaign in southern Kentucky and eastern Tennessee; and Osborne, whose mines were located in that area, was among the operations which UMW was seeking to organize.

Violence occurred periodically during this campaign. On occasions there was mass picketing at the Osborne mine and preparation plant. There is proof in the record

that on one of these occasions, Osborne employees were told to join the Union, or Union members would return to the pit and the situation would not be peaceful. There is proof that on still other occasions, trucks carrying coal from the Osborne mine were stopped and the drivers harassed and intimidated (Transcript, Vol. I, pp. 42-48, Vol. II, pp. 176-179, Vol. V, pp. 614-620, Vol. VIII, pp. 911-915).

Love and Amos was not involved in UMW's organizational campaign or the violence which took place during the existence of that campaign. As the Sixth Circuit said in a previous case between UMW and Love and Amos (discussed below), **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, 729-730 (6th Cir. 1960):

> "The labor dispute . . . was solely between U. M. W. and Osborne.
>
> ". . .
>
> "Love and Amos had no employees whom U. M. W. was attempting to organize, or for whom it was endeavoring to secure a collective bargaining agreement; U. M. W. did not induce or encourage any of Love & Amos' employees to strike in order to compel Osborne to bargain with U. M. W."

As a result of this campaign, Osborne's production decreased to the point that it ultimately became unable to meet the continuing requirements of the Love and Amos-TVA contract. And in September, 1955, with about 150,000 tons still undelivered, Love and Amos gave notice to TVA that it would have to terminate the contract.[2]

---

[2] Osborne later brought an action against UMW in the United States District Court for the Eastern District of Tennessee. Therein, it claimed, and was awarded, substantial compensatory damages ($165,000) and punitive damages ($50,000) for acts

Before bringing this case, Love and Amos had sued UMW in a federal court action. Therein Love and Amos sought damages on the theory that UMW was guilty of committing an unlawful secondary boycott and of violating certain Tennessee statutes and that as a result it had lost commissions which it would have earned had the Union not prevented Osborne from producing enough coal to complete the TVA contract. Jurisdiction was based on Section 303 of the National Labor Relations Act ("Act").

At the conclusion of a non-jury case tried together with Osborne's (see footnote 2), the district court held that "Love and Amos Coal Company are entitled to compensatory damages sustained as a proximate and direct result of the wrongful acts [i. e., secondary boycott] of the defendants." 29 U. S. C. A. 187 (B) . . . "**Love and Amos Coal Company v. United Mine Workers of America et al.**, Civil No. 3167, E. D. Tenn. January 27, 1959, 38 C. C. H. Lab. L. Rep., par. 65, 741 at p. 67, 684." Love and Amos was awarded $35,000—the amount of commissions the district court found it had lost because of UMW's destruction of Osborne's business.

On appeal, the Sixth Circuit reversed and dismissed Love and Amos' action for lack of jurisdiction, **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, 729 (6th Cir. 1960):

> "If Love & Amos were damaged as a result of any activities of defendants directed at it, an adequate remedy exists under state law. This is not the type of case contemplated by the Labor Management Act of 1947.

---

which the district court found to be in violation of Section 303 of the National Labor Relations Act and the common law of Tennessee. This judgment was affirmed by the Sixth Circuit Court of Appeals, *United Mine Workers of America v. Osborne Mining Company*, 279 F. 2d 716 (6th Cir. 1960), *cert. den.* 364 U. S. 881 (1960).

"Jurisdiction cannot be sustained on the ground that, Love & Amos having failed in their federal cause of action, the District Court may nevertheless retain the case and administer the cause of action under the common law of the state."

Following the dismissal of its federal action, Love and Amos filed the present case in the Circuit Court for Davidson County, Tennessee.

The declaration contained two counts. In the first, Love and Amos sought compensatory and punitive damages on the basis of allegations that UMW had unlawfully caused the breach of its contract with Osborne in violation of the Tennessee common law. In the second, Love and Amos sought damages on the basis of a Tennessee statute, Tenn. Code Ann. 47-1706,[3] which provides for treble damages against any person who induces or procures the breach of a lawful contract. The central theme of both counts is that UMW's acts were intended to cause the non-performance of the Love and Amos-Osborne contract.

UMW's first pleading was a demurrer, asserting, inter alia, that the controversy came within the scope of Section 8 of the Act and was therefore within the exclusive jurisdiction of the National Labor Relations Board. Appendix C (1), *infra*, p. 38. The Circuit Court overruled

---

[3] In full text, Tenn. Code Ann. 47-1706 reads as follows:

"It shall be unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of said contract; and the party injured by such breach may bring his suit for said breach and for such damages."

the demurrer by order dated April 21, 1961 (Transcript Vol. A, p. 54).

In its answer, UMW specifically raised the pre-emption defense based on Sections 7 and 8 of the Act. Appendix C (2), *infra*, p. 39.

The trial court held it had jurisdiction; and in an oral memorandum opinion, announced at the end of the case, it found that UMW had unlawfully caused a breach of the Love and Amos-Osborne contract.

The trial court held that Love and Amos was entitled to receive $60,000 compensatory damages under the first count, $36,024 of which was for commissions lost because of Osborne's cancellation of the TVA contract.

Under the second count, based on Tenn. Code Ann. 47-1706, the court held that UMW had violated the statute, and awarded Love and Amos $36,024 compensatory damages which it trebled to make $108,072.[4]

UMW moved for a new trial; one of the grounds being that jurisdiction over the subject matter had been pre-empted by Sections 7 and 8 of the Act. This motion was overruled by order dated November 30, 1962.

On appeal to the Court of Appeals of Tennessee, Middle Section ("Court of Appeals"), UMW raised the pre-emption question in its first assignment of error.

Relying on **United Automobile Workers v. Russell**, 356 U. S. 634 (1958) and **United Constr. Workers v. Laburnum**, 347 U. S. 656 (1954), the Court of Appeals overruled

[4] The judgment provided that the award on counts 1 and 2 should not be cumulative. All payments made in satisfaction of either count were to be credited against the payment made on the award with respect to the other count. Hence, in no event would Love and Amos be entitled to more than $108,072 under this judgment.

UMW's contention that the Labor Board had exclusive jurisdiction under the preemption doctrine and, after overruling all other assignments which are not material here, it affirmed the judgment of the trial court in its entirety. Judgment was entered July 26, 1963. Appendix B (3), *infra*, p. 37.

The opinion of the Court of Appeals states that there was sufficient evidence in the record to sustain the finding ". . . that one of the targets aimed at in thise [sic] demonstrations by the defendant [i. e., the demonstrations at or near the Osborne mines during the 1954-56 organizational campaign] was the Love and Amos contract with TVA which it desired to see cancelled." Appendix B (1), *infra*, p. 28.

In reaching the conclusion that UMW intended harm to Love and Amos, the Court of Appeals cited editorials in the UMW **Journal** (see Plaintiff's Exhibits 12 and 49) in which TVA's policy of buying coal from "get-rich-quick brokers" and non-union mines is criticized. It is pointed out that the editorial in Exhibit 12 also criticizes what UMW considered the Secretary of Labor's ineffective implementation of the Walsh Healey Act as it related to TVA's coal purchases. In addition, the Court of Appeals relied on another article in the UMW **Journal** which listed the names of coal brokers, including Love and Amos, who had sizable contracts with TVA, and in which TVA is again assailed for its ". . . irresponsible policy of awarding contracts to brokers and non-union operators. . . ." Appendix B. (1), *infra*, p. 25. Lastly, the Court referred to the testimony of several witnesses that UMW pickets had carried signs stating that the dispute was with Osborne and Love and Amos.

The Court of Appeals did not find that Love and Amos had been directly involved in the violence. It did find,

however, as its assertion of jurisdiction would indicate, that the presence of violence involving Osborne's operations was enough to justify reliance on the exception to the preemption rule set forth in **Russell** and **Laburnum**.

UMW raised the preemption question in its petition for certiorari filed in the Supreme Court of Tennessee. Appendix C (3), *infra*, p. 40. This petition was denied December 9, 1963. Appendix B (2), *infra*, p. 36.

## REASONS FOR GRANTING THE WRIT.

This petition raises an unresolved facet of the recurrent problem of defining the permissible scope of state jurisdiction in the field of labor relations.

The question presented is new. Heretofore, this Court has not decided whether the exception to the preemption rule, as announced in **Russell** and **Laburnum**, authorizes the assertion of state jurisdiction to award damages, or as here, treble damages, to a person who was not involved in the labor dispute, or the attendant violence, on the theory that its contract with the employer was breached.[5]

---

[5] Of course the preemption doctrine requires that the conduct of the employer or union be at least arguably subject to Section 7 or Section 8 of the Act. That requirement is met here. While trying to organize Osborne's employees in 1954-56, UMW committed acts that were at least arguably subject to Section 8. This would be so if UMW had done nothing more than try to coerce Osborne employees into Union membership. Under precedents holding that literally "any person" may file unfair labor practice charges, Love and Amos could properly have sought relief before the Labor Board—even though, as the Sixth Circuit was later to hold, see *United Mine Workers of America v. Osborne Mining Co.*, 279 F. 2d 716, 729 (6th Cir. 1960), it was neither a primary nor neutral employer within Section 303 of the Act. *Wine, Liquor and Distillery Workers Union*, 78 NLRB 504, 506 (1948); *Southern Furniture Mfg. Co. v. NLRB*, 194 F. 2d 59 (5th Cir. 1952). In fact, however, Love and Amos did not seek relief before the Labor Board.

The jurisdiction of state courts depends on violence or threats of violence. **Russell** and **Laburnum** so hold. But the question that remains open—and the question presented here—is this: once violence is established, do state courts have unlimited jurisdiction to adjudicate all claims arising out of the labor dispute, regardless of whether the plaintiff was involved in the labor dispute, and regardless of whether his damages were the immediate result of violence. Stated another way, is the jurisdiction of state courts confined to adjudicating the rights of persons who were directly involved in the labor dispute and whose damages resulted from the immediate impact of the violence.

**Russell** and **Laburnum** did not require an answer to these questions because in each of those cases the plaintiff was the immediate object of the union's violence. Here the facts are different. Assuming, as we must, that UMW committed unlawful acts of violence **toward Osborne**, the fact remains that Love and Amos was neither directly nor indirectly involved in these acts. The violence occurred in the eastern Tennessee coal fields, at or near Osborne's mines, whereas Love and Amos' place of business was some 200 miles away in Nashville. And the damages claimed by Love and Amos were for commissions lost as a result of Osborne's inability to produce enough coal to meet the TVA contract.

These factual nuances, which we consider of crucial importance to the application of the preemption doctrine, did not deter the Tennessee Court of Appeals from making quick work of the jurisdictional defense. Seizing the fact that UMW committed acts of violence toward Osborne, the Court of Appeals was satisfied that the assertion of its own jurisdiction was warranted because ". . . the U. S. Supreme Court has recognized preservation of a right of action under state laws where the

injury arises from acts of violence." Appendix B (1), *infra*, p. 30. **Russell** and **Laburnum** were construed to mean that the presence of violence, in and of itself, and irrespective of any other considerations, was enough to invest state courts with plenary jurisdiction over all phases of labor controversies which otherwise would be within the exclusive jurisdiction of the Labor Board.

The approach of the Tennessee courts disregards significant guide lines from other decisions of this Court which point to the conclusions that even in situations that are exempted from the exclusive jurisdiction of the Labor Board, the states do not have unlimited jurisdiction. The exception to the preemption rule is founded on the rationale that "state jurisdiction has prevailed . . . [in cases of violence] because the compelling state interest, in the scheme of our federalism, **in the maintenance of domestic peace** is not overriden in the absence of clearly expressed congressional direction." **San Diego Building Trades Council v. Garmon**, 359 U. S. 236, 247 (1959). Standing alone, then, violence is not a magic touchstone to the creation of a *carte blanche* authority for state jurisdiction. The criterion is not that states should have power to grant a remedy for every conceivable wrong committed in the course of a labor dispute, marked by violence, but that states should have power to maintain domestic peace.

To the end that domestic peace may be maintained, the states are empowered to adjudicate claims for damages " . . . resulting from the violence." **San Diego Building Trades Council v. Garmon**, supra, at 785, fnt. 6. But after analyzing **Laburnum** and **Russell** in the **Garmon** case, Mr. Justice Frankfurter pointed out that " . . . there is nothing in the measure of damages to indicate that state power was exerted **to compensate for any thing more than the direct consequences of the violent conduct**.

**San Diego Building Trades Council v. Garmon**, supra, at 785, fnt. 6 (Our emphasis).

Tested against the reasoning in **Garmon**, the Tennessee court's assertion of jurisdiction obviously goes beyond the limits established by the rationale of the preemption rule. Under the criterion of preserving domestic peace, there is no doubt that a Tennessee court could have exercised jurisdiction over the violent phases of the UMW-Osborne controversy. From both a legal and geographical standpoint, the position of Osborne in relation to the union was the same as that of the plaintiffs in **Laburnum** and **Russell**. Osborne, in other words, was enmeshed in the actual violence, and as a direct result sustained damages of a character which could not have been suffered but for the violence. This is not true of Love and Amos. Its claim is based on allegations of lost commissions, due to the interruption of contractual relations. The presence or absence of violence is of incidental importance to this theory of recovery, because the damage claimed could as easily have resulted from peaceful conduct. The enforcement of this type of claim by a state court finds no precedent in any of this Court's decisions dealing with the preemption doctrine.

There is no issue of preserving domestic peace as between Love and Amos and UMW. The offices and employees of Love and Amos were far removed from the turbulence complained of. And the Tennessee courts, in holding the Union liable, did not find that UMW committed acts of violence toward Love and Amos. Although the state courts found that UMW's conduct toward Osborne was intended to harm Love and Amos, the specific findings underlying this conclusion relate not to violence, but to inferences drawn from editorials in the UMW **Journal** and to placards saying that the Union's dispute was with Osborne **and** Love and Amos.

Moreover, the theory on which the Tennessee courts awarded damages is not based on violence. Rather, it is based on the conclusion (which involves an adjudication of the merits of the claim) that UMW had caused the nonperformance of the contract between Osborne and Love and Amos. Regardless of whether Love and Amos was UMW's ultimate object, or one of UMW's objects, the damage sustained because of the interruption of its contractual relationship, is inherently incidental and consequential.

Far from vindicating state power, through the preservation of domestic peace, the action of the state court manifests a possessory interest in awarding damages for "meritorious" claims, irrespective of whether violence is or is not an intrinsic element of the claim. So far as Love and Amos was concerned, peaceful activities of long duration might well have produced the same result. And unlike Osborne's damages, or Russell's or Laburnum's, those claimed by Love and Amos are not of the type in which violence or threats of violence is a necessary ingredient. This again underscores the basic difference between **Russell**, **Laburnum** and this case.

There is one more important difference. As this Court has said, "There is nothing in the measure of damages [in **Laburnum** or **Russell**] to indicate that state power was exerted to compensate for anything more than the **direct consequences** of the violent conduct." **San Diego Building Trades Council v. Garmon**, supra, at 785, fnt. 6. (Our emphasis.) Here, in contrast, the Tennessee courts applied a state statute, Tenn. Code Ann. 47-1706, so as to triple the award of compensatory damages—and, at that, for damages which are in legal contemplation only **indirect consequences** of the violent conduct. If, as we believe, the exception to the pre-emption rule is based on the states' continuing interest in maintaining domestic peace, there

is no warrant for taking jurisdiction over the type of claim asserted by Love and Amos. And a fortiori, there is no "compelling state interest" which would justify an award of three times the claimant's compensatory losses, even if jurisdiction were properly asserted in the first instance.

In some respects this case resembles **Russell** and **Laburnum**, but in other, equally important respects, it resembles **Iron Workers Local 207 v. Perko**, 373 U. S. 701 (1963), and **Plumbers Local 100 v. Borden**, 373 U. S. 690 (1963), where the pre-emption doctrine was applied so as to exclude a damage action from state jurisdiction. At the same time the factual nuances make it distinctly different from all those cases. The question then is which rule controls—the rule of **Russell** and **Laburnum** or the rule of **Perko**, **Borden** and **Garmon**. Obviously the applicable rule lies somewhere between these sets of cases. Just where it lies, whether closer to **Russell** or closer to **Perko**, is what this petition seeks to have the Court answer.

This petition presents a question of substantial importance to the effective administration of the National Labor Relations Act. The issue raised—that of the permissible scope of state jurisdiction—is potentially present in every labor dispute in which there is even a suggestion of union misconduct.

The decision of the Court of Appeals in this case has almost unlimited implications. Under its reasoning, parties who have no concern with a labor dispute are permitted to assert damage claims in state courts, irrespective of their involvement in any acts of violence or misconduct.

The state courts did not find that Love and Amos was involved in the violence. Jurisdiction was asserted here because of the courts' conclusion that an "object" of UMW was to cause the nonperformance of the Love and

Amos-Osborne contract. The pre-emption doctrine becomes a principle of easy avoidance and uncertain application if it depends on a state court's preliminary inquiry into the question of a union's objectives. For the use of such a test inevitably lends itself to facile judgments. To some fact-finders, a single act of misconduct may be enough to "show" that a union's object was to inflict harm on nearly everyone—even those on the outermost periphery of a labor dispute.

All of this conflicts with the goal of achieving a uniform national labor policy. It also conflicts with the rationale underlying the pre-emption doctrine and the exception to it.

## CONCLUSION.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

JOHN B. RAYSON,

E. H. RAYSON,

R. R. KRAMER,
904 Burwell Building,
Knoxville, Tennessee,

HARRISON COMBS,
900 Fifteenth Street, N. W.,
Washington, D. C.,
Counsel for Petitioner.